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Your Rights Under the Health Insurance Portability and Accountability Act (HIPAA)

What is HIPAA?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended the Employee Retirement Income Security Act to provide new rights and protections for participants and beneficiaries in group health plans. Understanding this amendment is important to your decisions about future health coverage. HIPAA contains protections both for health coverage offered in connection with employment (group health plans) and for individual insurance policies sold by insurance companies (individual policies).

If you find a new job that offers health coverage, or if you are eligible for coverage under a family member's employment-based plan, HIPAA includes protections for coverage under group health plans that:

- Limit exclusions for preexisting conditions
- Prohibit discrimination against employees and dependents based on their health status
- Allow a special opportunity to enroll in a new plan to individuals in certain circumstances

If you choose to apply for an individual policy for yourself or your family, HIPAA includes protections for individual policies that:

- Guarantee access to individual policies for people who qualify
- Guarantee renewability of individual policies

What does it mean to be HIPAA-eligible?

To be HIPAA-eligible, you must meet all seven of the following requirements:

1. You have at least 18 months of "creditable coverage" without a significant break in coverage. A significant break in coverage is a period of 63 or more consecutive days during all of which you had no coverage. (A waiting period is not counted as a break in coverage.) If you get coverage by midnight of the 63rd day, you have not incurred a significant break.
2. Your most recent coverage must have been through a group health plan (through your own coverage or a family member's).
3. You are not eligible for coverage under any other group health plan.
4. You are not eligible for Medicare or Medicaid.
5. You do not have other health insurance.
6. You did not lose your insurance for failure to pay the premiums or for committing fraud.
7. You accepted and exhausted your COBRA continuation coverage or similar state continuation coverage if it was offered to you.

What is creditable coverage?

Creditable coverage includes any of the following types of coverage:

- A group health plan (including COBRA coverage)
- Individual health insurance (including short-term, non-renewable policies)
- Medicare Part A or B
- Medicaid
- Medical care program for individuals in the armed forces
- Medical care program of the Indian Health Service or tribal organization
- A state high-risk pool
- Health plan provided to federal government workers (some government plans may be exempt from some or all HIPAA requirements)
- A public health plan
- A health benefit plan provided to Peace Corps volunteers

What protections does HIPAA provide to people leaving group coverage?

No Preexisting Condition Exclusions

Plans may not impose preexisting condition exclusion periods, even if medical advice, diagnosis, care, or treatment was provided before the consumer sought insurance coverage under HIPAA. A preexisting condition exclusion period is a time during which a health plan will not pay for covered care relating to a preexisting condition. Conditions commonly coming under preexisting condition exclusion include cancer, heart problems, diabetes, and even pregnancy.

Certificate of Creditable Coverage

Group health plans and health insurance issuers are required to provide a certificate of creditable coverage when you cease to be covered under the plan or you become covered under a COBRA provision and when COBRA coverage ceases. The certificate must describe the amount of creditable coverage you have, the date the coverage ended, and the waiting period imposed. When you receive a certificate of creditable coverage, you should check to make sure it is accurate. You should contact the plan administrator of the former health plan or the health insurance issuer if it is incorrect. You may request a copy of the certificate from the plan administrator of the prior group plan. This certificate must be provided at no cost to you. You may also request a certificate describing particular coverage at any time while the coverage is in effect and within 24 months of the time the coverage ends, again at no cost to you. If you do not receive a certificate of coverage, the new health plan must accept other documentation that shows you had prior creditable coverage. Documentation could include any of the following:

- Pay stubs that show a premium deduction
- Explanation of benefit forms
- A benefit termination notice from Medicare or Medicaid
- Verification by a doctor or former health care benefits provider that you had prior health coverage

What if an issuer or plan is not complying with HIPAA? Who can enforce HIPAA requirements?
A state insurance commissioner or attorney general may enforce the requirements against health insurance issuers. The U.S. Department of Labor should be contacted regarding any suspected compliance problems by employer group health plans.

HIPAA Privacy Rules

Complaints pertaining to HIPAA Privacy Rules
By law, health care providers (including doctors and hospitals) who engage in certain electronic transactions, health plans, and health care clearinghouses must comply with the Privacy Rule as of April 14, 2003. If you believe a covered entity is not complying with a requirement of the Privacy Rule, you may file with the Office for Civil Rights (OCR). You may file a written complaint, either on paper or electronically. This complaint must be filed within 180 days of when you knew or should have known that the act occurred. The Secretary may waive this 180-day time limit if good cause is shown. Further information on how to file a complaint with the OCR may be found at their Web site: www.hhs.gov/ocr/hipaa/. In addition, after the compliance dates above, you have a right to file a complaint directly with the covered entity. You should refer to the covered entity's notice of privacy practices for more information about how to file a complaint with the covered entity.

For more information on HIPAA, contact the Health Assistance Partnership at 202/737-6340 or sschwartz@healthassistancepartnership.org.

Information for this fact sheet was taken from materials provided by the Health Assistance Partnership and the U.S. Department of Labor Pension and Welfare Benefits Administration.

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